MINISTER OF LABOUR & THE GOVERNMENT OF MALAYSIA *a*

v.

LIE SENG FATT

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
AJAIB SINGH SCJ
[SUPREME COURT CIVIL APPEAL NO. 93 OF 1988]
3 MARCH 1990 *b*

LABOUR LAW: *Dismissal - Application to refer matter to Industrial Court - Minister exercising decision not to refer matter to Industrial Court - Whether discretion properly exercised - Industrial Relations Act 1967, ss. 20(1), 20(3).* *c*

This was an appeal against an order of *certiorari* to quash the decision of the Minister of Labour who had decided pursuant to s. 20(3) of the Industrial Relations Act 1967, not to refer a complaint by the respondent to the Industrial Court. In 1979, the respondent was employed as a project manager by Koperasi Belia Bersatu Bhd., (KBBB) and then as deputy general manager in 1980. In 1981 he was appointed as acting deputy general manager of Kin Kwok Daily News Sdn. Bhd. (KKDN), a subsidiary of KBBB. In 1982 he was appointed general manager of KBBB. In 1986, his appointment as general manager of KBBB was terminated and he was transferred back to KKDN. Being dissatisfied, he lodged a complaint under s. 20(1) of the Act, that he considered himself to have been dismissed without just cause or excuse. The Minister decided under s. 20(3) of the Act, not to refer the matter to the Industrial Court. *d* *e*

Held:

[1] There is no question that the power of the Minister under s. 20(3) of the Act is wide and the language used by the Legislature would be seem to confer on the Minister a wide discretion whether to refer or not to refer a dispute to the Industrial Court, depending on the facts of each case provided of course he has acted *bona fide*, that is without any improper motive and he has not taken into account extraneous or irrelevant matters. *f*

[2] The Minister has an unfettered discretion but it should not be exercised so as to frustrate the object of the statute itself.

[3] In this case, the Minister must have considered that the complaint was not a fit and proper one for reference to the Industrial Court based on the facts before him. The facts showed that there was really no dismissal in the true sense of the word. *g*

[Appeal allowed with costs in the High Court/Supreme Court. Order of the High Court set aside.]

Cases referred to: *h*
Padfield and Ors. v. Minister of Agriculture, Fisheries and Food and Ors. [1968] 1 All ER 694
Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223

Legislation referred to:
Industrial Relations Act 1967, ss. 20(1), (3)
Rules of the High Court 1980, O. 53

For the appellants - Kang Hwee Gee, Senior Federal Counsel *i*
For the respondents - Vincent Chandran; M/s. Chan Yat Hee & Associates

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The respondent, Lie Seng Fatt, filed on 14 November 1987 a notice of motion in the High Court, Kuala Lumpur for an order of *certiorari* to quash the decision of the Minister of Labour contained in a letter dated 16 September 1987 (at p. 34 in appeal record) read in Bahasa Malaysia as follows:

> Y.B. Menteri Buruh telah memutuskan di bawah s. 20(3) Akta Perhubungan Perusahaan 1967, bahawa perkara ini tidak menafaat dirujukkan ke Mahkamah Perusahaan.

(The Hon'ble Minister of Labour has determined under s. 20(3) of the Industrial Relations Act 1967 that this matter is not fit to be referred to the Industrial Court).

The statement pursuant to O. 53 of the Rules of the High Court 1980 in support of the notice of motion (at p. 12 in Appeal Record) gave three grounds for the relief sought namely:

(i) The Minister of Labour did not comply with the Rules of Natural Justice by not giving reasons for his refusal to refer the dispute.

(ii) The Minister of Labour purported to deal with the dispute when the Parliament entrusted the function to the Industrial Court under the Industrial Relations Act 1967.

(iii) The Minister of Labour took into account matters which are outside that which he is empowered to do under s. 20(3) Industrial Relations Act 1967.

During the hearing before the learned Judge in the High Court the first ground was abandoned by Counsel - see p. 16 in appeal record. Thus only grounds (ii) and (iii) remained to be considered. The learned Judge granted the order of *certiorari* to quash the decision of the Minister.

Section 20 of the Industrial Relations Act 1967 (the Act) was extensively amended in 1989 but for the purpose of this case the relevant provisions of s. 20 of the Act read as follows:

> 20.(1) Where a workman who is not a member of a trade union of workmen *considers that he* has been dismissed without just cause or excuse by his employer he may, within thirty days of the dismissal, make representations in writing to the director general to be reinstated in his former employment; the representations may be filed at the office of the director general nearest to the place of employment from which the workmen was dismissed.
>
> (2) Upon receipt of the representations the director general shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the director general is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
>
> (3) Upon receiving the notification of the director general under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.

The crux of the matter here is the operation of the words "the Minister may, if he thinks fit refer the representations to the Court" in s. 20(3) of the Act.

What is the extent of the power of the Minister to refer or not to refer the representations to the Industrial Court. It would seem clear that a wide discretion is conferred on the Minister of Labour to refer or not to refer a dispute to the Industrial Court but is that discretion unfettered.

It would be useful to recapitulate at this stage on the undisputed background facts of the case. The respondent was employed by Koperasi Belia Bersatu Berhad, a company as a project engineer of the company on 28 November 1979. On 9 July 1980 he was appointed as the deputy general manager of Koperasi Belia Bersatu Berhad. On 15 April 1981 he was appointed as acting deputy general manager of Kin Kwok Daily News Sdn. Bhd., a subsidiary of Koperasi Belia Bersatu Berhad. On 7 September 1982 he was appointed as general manager of Koperasi Belia Bersatu Berhad. By a letter dated 13 November 1986 his appointment as general manager of Koperasi Belia Bersatu Berhad was terminated and he was transferred back to Kin Kwok Daily News Sdn. Bhd. The respondent was dissatisfied with his change and as advised by his solicitors he lodged a complaint to the director general of Industrial Relations pursuant to s. 20(1) of the Act as he considered he had been dismissed without just cause and excuse.

There is no question that the power of the Minister under s. 20(3) of the Act is wide and the language used by the Legislature would seem to confer on the Minister a wide discretion whether to refer or not to refer a dispute to the Industrial Court depending on the facts of each case provided of course he has acted *bona fide* that is without any improper motive and he has not taken into account extraneous or irrelevant matters. He has an unfettered discretion but should not be exercised so as to frustrate the object of the statute itself.

In *Padfield and Ors. v. Minister of Agriculture, Fisheries and Food & Ors.* [1968] 1 All ER 694 the appellants there made a complaint to the Minister and asked that the complaint be referred to a committee of investigation established under the statute concerned. The words used by the statute there were "if the Minister in any case so directs." The Minister declined to do so. The Minister gave his reasons for refusing to refer the matter and stated also that he did not consider the matter suitable for such investigation. The Divisional Court granted an order of *mandamus* directed to the Minister requiring him to refer the matter to the committee of investigation. The case went up to the Court of Appeal (Diplock, Russell and Lord Denning, M.R. with Lord Denning dissenting) which set aside the order of the Divisional Court. The matter then went up to the House of Lords. Lord Reid in his leading speech allowed the appeal and the matter was remitted back to the Queen's Bench Division with the direction to require the Minister to consider the complaint of the appellants according to law. Lord Hodson, Lord Pearce and Lord Upjohn also concluded that the appeal should be allowed. Lord Morris of Borth-Y-Gest, however, in his speech dismissed the appeal.

The question before the House of Lords was the nature and extent of the Minister's duty in deciding whether to refer to the committee of investigation a complaint as to the operation of the milk marketing scheme. The Minister contended that his only duty was to consider the complaint fairly and that he was given an unfettered discretion in the matter. The appellants however contended that it was the Minister's duty to refer every genuine and substantial complaint or alternatively the discretion was not unfettered and contended that the Minister's refusal was influenced by his having misdirected himself in law or by having taken into account extraneous or irrelevant considerations.

Addressing himself on the issue Lord Reid in his speech at p. 699 said:

> In my view the appellants' first contention goes too far. There are a number of reasons which would justify the Minister in refusing to refer a complaint. For example he might consider it more suitable for arbitration, or he might consider that in an earlier case the committee of investigation had already rejected a substantially similar complain, or he might think the complaint to be frivolous or vexatious.

In *Padfield* the first reason given by the Minister was that the complaint was unsuitable for investigation because it raised wide issues. It was clear to Lord Reid that this was a misdirection. Lord Reid concluded that the Minister's discretion was not unlimited and that it had been used by the Minister in a manner which was not in accord with the intention of the statute concerned and therefore the Minister's discretion had never been properly exercised according to law.

A general guideline on the functions of the Court before the interfering in the exercise of an executive discretion can be found in the judgment of Lord Greene M.R. in the celebrated case *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation* [1948] 1 KB 223. The Court can only interfere with an act of executive authority if it be shown that the authority has contravened the law. Secondly the Court is not a court of appeal in such matters. Thirdly the exercise of such discretion is governed by certain principles and so long as the exercise is within the four corners of these principles the discretion is absolute and cannot be questioned in a Court of Law. Lord Greene elaborated on those principles and they are that the exercise of the discretion must be a real exercise of the discretion and that the authority exercising the discretion must consider matters required to be considered and disregard irrelevant collateral matters. If the authority fails to observe these principles the exercise of discretion cannot be said to be "reasonable". Lord Greene then summed up his guideline as follows:

> The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confined in them.

The appellant in our case having abandoned ground (i) has only grounds (ii) and (iii) in support of his case. Paragraphs 11 and 12 of his affidavit in support of the notice of motion read as follows:

> 11. By the letter dated 16 September 1987 I was informed that the Minister of Labour had refused to refer the matter to the Industrial Court under s. 20(3) of the Industrial Relations Act 1967. No reasons were given. A copy of the letter is now produced and marked as LSF8.
> 12. I verily believe that the Minister had decided on a question of law which usurped the powers of the Industrial Court under the Industrial Relations Act 1967 and consequently committed the errors going to jurisdiction.

The Minister in his letter in fact gave the reason why he did not refer the matter to the Industrial Court. It would seem clear that the reason was that he considered the matter not a fit and proper one to be referred. When arriving at this decision he must have considered the facts surrounding the circumstances leading to the complaint the appellant made to the director general.

As regards the allegation that the Minister usurped the powers of the Industrial Court we do not see any basis for us to come to that conclusion.

In our view the Minister must have considered that the complaint was not a fit and proper one for reference to the Industrial Court based on the facts before him.

The facts show that there was really no dismissal in the true sense of the word. The appellant had been transferred to a post within the control and sphere of the parent company, Koperasi Belia Bersatu Berhad and in the process the appellant could have been given position which he considered inferior to the previous one. The letter from Koperasi Belia Bersatu Berhad to the appellant dated 13 November 1986 (p. 31 appeal record) in our view puts the position clear. The letter reads as follows:

I am directed by the board to inform you that the board had terminated your position as general manager in Kosatu with immediate effect.

As you were all these while seconded as acting general manager of Kin Kwok Daily News Sdn. Bhd. The board now appointed you as full time general manager of Kin Kwok Daily News Sdn. Bhd.

Kindly arrange to hand over motor vehicle bearing registration no. WBE 4937 and other relevant documents of Kosatu and its subsidiaries at your earliest possible.

The Minister had a discretion under s. 20(3) of the Act and that is not in dispute. The issue is whether the discretion is unfettered. To say it is an unfettered discretion is a contradiction in terms. Unfettered discretion is another name for arbitrariness.

The Minister's discretion under s. 20(3) is wide but not unlimited. As stated earlier so long as he exercises the discretion without improper motive the exercise of discretion must not be interfered with by the Court unless he had misdirected himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious which in our view this is one.

The appeal is accordingly allowed with costs here and below. The order of the learned Judge is set aside.

Also found at [1990] 1 CLJ 1103